IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2690 of 2005

Date of decision : 9.10.2006.

Supinder Singh and others .....Appellants

versus

Mohan Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Malkeet Singh, Advocate for the appellants.

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ORDER

HEMANT GUPTA, J. (oral)

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby their suit for possession by way of partition of the property, was dismissed.

One Mewa Singh was owner of the disputed property situated at Patiala, Gujjarwal in District Ludhiana and some property in district Sri Ganganagar in the State of Rajasthan. The plaintiffs are the children of Mewa Singh out of his wedlock with Bachan Kaur. Defendant Nos.6, 7, 8 & 9 are the children of Mewa Singh out of his wedlock with Tej Kaur.

It has come on record that earlier one Lal Singh, brother of the plaintiffs out of the wedlock of Mewa Singh with Bachan Kaur, filed a suit for possession of the property situated at Patiala, in which the contesting defendants propounded Will dated 15.3.1996 executed by Mewa Singh. The present plaintiffs were the parties in the said Suit. In the said proceedings, the Will dated 15.3.1996 was proved to be executed by Mewa Singh and, therefore, the said suit was dismissed. In the present suit, the

defendants have raised the plea of res-judicata keeping in view the proceedings of the earlier suit upholding the Will dated 15.3.1996.

The sole argument of the learned counsel for the appellants is that the proceedings of the said suit have not been produced in the present case and, therefore, the plea of res-judicata is not available in the present case. However, I am unable to accept said argument of the learned counsel for the appellants. The plaintiffs are parties to said suit. It is not disputed that Will dated 15.3.1996 was propounded in the said suit and upheld by Civil Court. Therefore, in view of undisputed facts, the findings recorded in the said suit that Mewa Singh has executed the Will dated 15.3.1996 would operate as res-judicata in the present suit.

Consequently, I do not find any merit in the present appeal, which may raise any substantial question of law in the second appeal, for consideration of this Court.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

October 9, 2006.

**mohinder*